

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

PROPEP, L.L.C., d/b/a  
PROPEP SURGICAL, L.L.C.

Plaintiff,

v.

MEDTRONIC XOMED, INC.,

Defendant.

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CIVIL ACTION NO. 1:15-CV-356-SS

**JOINT STIPULATION REGARDING PATENT CLAIM CONSTRUCTION**

Plaintiff ProPep, L.L.C., d/b/a ProPep Surgical, L.L.C. ("ProPep") has sued Medtronic Xomed, Inc. ("Medtronic"). Its claims are denominated as breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, and trade secret misappropriation and unfair competition. ProPep does not bring any claims for patent infringement.

The evidence in the case will involve various patents and patent applications, including ProPep's application 11/745,505, which issued as patent 8,083,685 B2, ProPep's application 13/107,855, which is pending, and Medtronic's application 12/771,713, which is pending. However, the case does not involve any claims of patent infringement, nor any other claims that will require claim construction under *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), and its progeny. Instead, the patent applications and patents will be relevant, if at all, in connection with the content of their specifications.

The parties therefore agree and hereby stipulate that none of plaintiff's claims will require the construction of the claims in any of the patents or patent applications mentioned above. No party will request a *Markman* hearing or seek the court's construction of the claims of any patent.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on the 14th day of July, 2015, a true and correct copy of the above and foregoing was electronically filed using the CM/ECF system, which will send notification of this filing to the below counsel of record:

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